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CHARLES ELMORE

No. 314

In the Supreme Court of the United States

OCTOBER TERM, 1929

NILES BEMENT POND COMPANY, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the Court of Claims (R. 27–40) is not yet officially reported.

JURISDICTION

The judgment sought to be reviewed was entered May 13, 1929. (R. 40.) The petition for writ of certiorari was filed August 9, 1929. (R. 41.) The jurisdiction of this Court rests on Section 3 (b) of the Act of February 13, 1925.

QUESTION PRESENTED

Whether petitioner was entitled, in its return for income and profits taxes for the calendar year 1918, to a credit on account of British taxes paid in that year, but assessed on account of income received in the years 1914, 1915, and 1916, where during the years 1916, 1917, 1918, and 1919 petitioner's books of account were kept on the accrual basis, and tax returns for said years were filed on the accrual basis.

STATUTES INVOLVED

The pertinent provisions of the Revenue Act of 1916, c. 463, 39 Stat. 756, 767, 769–771, are as follows:

DEDUCTIONS

SEC. 12. (a) In the case of a corporation, joint-stock company or association, or insurance company, organized in the United States, such net income shall be ascertained by deducting from the gross amount of its income received within the year from all sources—

* * * * *

Fourth. Taxes paid within the year imposed by the authority of the United States, or its Territories, or possessions, or any foreign country, or under the authority of any State, county, school district, or municipality, or other taxing subdivision of any State, not including those assessed against local benefits.

* * * * *

RETURNS

SEC. 13. (a) The tax shall be computed upon the net income, as thus ascertained * * *;

* * * * * *

(d) A corporation, joint-stock company or association, or insurance company, keeping accounts upon any basis other than that of actual receipts and disbursements, unless such other basis does not clearly reflect its income, may, subject to regulations made by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, make its return upon the basis upon which its accounts are kept, in which case the tax shall be computed upon its income as so returned.

* * * * * *

STATEMENT

The amended petition upon which the case was tried in the Court of Claims asked recovery of income and excess-profits taxes paid for the years 1917, 1918, and 1919 upon three separate grounds, but the petition for writ of certiorari presents only the claim for credit on account of British taxes paid in 1918.

The Court of Claims found that the petitioner is, and has been since 1900, a New Jersey corporation with principal place of business at New York City, and that it was, during the years 1916 to 1919, engaged in the business of manufacturing machine

tools and selling such products in various States of the United States and in Great Britain and other parts of the world. (R. 27.)

Petitioner in 1918 paid to the Government of Great Britain $4,488.72, as income taxes for the year beginning April 6, 1917, and ending April 5, 1918, on income derived from sources within Great Britain, and $44,126.40 as excess-profits duty for the accounting period ended December 31, 1916, on income derived from sources within Great Britain. (R. 28.)

The amounts of said taxes were claimed as a credit on petitioner's income and profits tax return for the calendar year 1918, but the Commissioner of Internal Revenue refused petitioner credit for said taxes for that year. The British taxes were paid pursuant to notices dated January 19 and 24, 1918. These notices were the first information received by petitioner as to the amount of the aforesaid income tax and excess-profits duty. (R. 28.)

Throughout the year 1918 petitioner, in keeping its books, accounted for the expenses of the London office upon a cash-disbursement basis, and no accruals were made for any such expenses in advance of payment. The British taxes paid in 1918 were expenses of petitioner's London office. (R. 29.)

During the years 1916, 1917, 1918, and 1919, the books of petitioner were kept on the accrual basis. There were some exceptions in small items of deferred charges and credits in the petitioner's ac-

counts, where the cash basis was reflected. The general and controlling character of the accounts was to show income upon an accrual basis. (R. 29–30.)

Petitioner's American tax returns for 1916, 1917, 1918, and 1919 were filed on the accrual basis. (R. 30.)

The aforesaid British income taxes paid by petitioner in 1918 were assessed on account of income received in the years 1914, 1915, and 1916. The Commissioner of Internal Revenue allowed petitioner deductions prior to 1918 for all of the British taxes in dispute. These taxes were based upon returns to the British Government made by petitioner prior to 1918. (R. 30.)

ARGUMENT

Prior to January 1, 1918, the Internal Revenue Acts provided that foreign taxes accrued or paid should reduce gross income. The Commissioner of Internal Revenue accordingly allowed the British taxes as a deduction from gross income prior to 1918, since petitioner kept its books and made its tax return on the accrual basis, and since these taxes accrued prior to 1918. Under the Revenue Act of 1916, tax returns could be made on the accrual basis, if the books were kept on that basis.

Prior to the 1916 Revenue Act, returns were required to be made on a receipts and disbursements basis. Although Section 12 (a) of the Act of 1916

dealing with deductions provided for the deduction of "expenses paid within the year," and "losses actually sustained within the year," Section 13 (d) provided for an alternative method permitting the taxpayer, if he kept his books on an accrual basis, to make his return on that basis, deducting expenses accrued within the year and taxes accrued within the year. Since petitioner kept its books and made its tax returns on the accrual basis, it must stand consistently on that basis. The fact that a branch of petitioner in London did not keep its particular account on the accrual basis in no way affects the matter, for the court below found that the general books of account of the corporation were kept on an accrual basis.

Since petitioner made its return for 1918 on an accrual basis, an allowance of credit in that year for foreign taxes accrued in prior years would be inconsistent with any method of accounting. The decision of the Commissioner of Internal Revenue with respect to the allowance of the taxes in question is sustained by *United States* v. *Anderson*, 269 U. S. 422, and *United States* v. *Mitchell*, 271 U. S. 9.

The tax return involved in the *Mitchell case* was made on the basis of actual receipts and disbursements, but the language of the opinion states the correct rule for the pending case. This Court said, in part (p. 12):

> * * * The return shows that it was made on the basis of income actually re-

ceived in 1919. This indicates that the accounts were kept on the basis of actual receipts and disbursements, and there is nothing in the record to show that any other method was employed. The burden is on the executors to establish the invalidity of the tax. *United States* v. *Anderson, supra.* They have not shown that their books were kept on the accrual basis. Assuming, as we must, that the accounts of the estate were kept on the basis of actual receipts and disbursements, the executors were required to make return on that basis. Notwithstanding the option given taxpayers, it is the purpose of the Act to require returns that clearly reflect taxable income. That purpose will not be accomplished unless income received and deductible disbursements made are treated consistently. It was not the purpose of the Act to permit gross income actually received to be diminished by taxes or other deductible items disbursed in a later year, even if accrued in the taxable year. It is a reasonable construction of the law that the same method be applied to both sides of the account.

The word "accrue" is used in different connections. Under the accrual system of accounting, however, income is said to be accrued when it is definitely receivable, although its payment may not be due, and liabilities or expenses are said to be accrued when the events have occurred which fix liability, even though payment is not yet due.

Expenses of any kind definitely incurred in the operations for a particular year are properly accrued in the accounts for that year, although payment may not be due until the following year. Under this system the use of the word "accrued" does not signify that the item is due. On the contrary, the accrual system wholly disregards due dates. Neither is it necessary that the amount of an incurred liability be accurately ascertainable in order to "accrue" it. The British taxes in question accrued prior to 1918. *United States* v. *Anderson*, 269 U. S. 422, *supra*.

On page 11 of petitioner's brief, it is contended that the Government has not questioned that petitioner's method of accounting reflected the correct income. This contention is accurate in only a very limited sense. The necessary implication from the act of the Commissioner, denying the credit claimed, is a denial of the accuracy of petitioner's procedure in combining cash items and accrual items. For taxation purposes, resort is had to the books of account for making up the correct returns. When an item shown by the books is excluded by the Commissioner from the return, it must be because the item, in his view, at least, is not a proper item entering into the final computation of income. In other words, including it would not reflect correct income for the period in question.

Petitioner's brief quotes sentences from various reported cases as support for its contentions. In

none of these cases, however, can we find a discussion of the point in issue in the pending case. In the opinion in the case of *Morris-Poston Coal Company*, 13 B. T. A., 344, cited on page 12 of petitioner's brief, is the following language:

> * * * As observed by the court in the *Hyams Coal Co.* case, *supra:*
>
> "There is no doubt that under the Revenue Law of 1918 the accrual basis, once adopted, must be consistently adhered to by the taxpayer. The courts have recognized this consistently, and denounced any practice that would result in computing taxes attributable to a given year using the cash basis for a part and an accrual basis for the balance of the year. The law contemplates consistency in the keeping of books once a method is adopted. *N. S. Barstow and Co.* v. *Bowers, Collector*, 15 Fed. (2), 75, 78."

The regulations of the Bureau of Internal Revenue, cited on page 19 of petitioner's brief, were not in effect after the accrual method of making returns was authorized by law.

CONCLUSION

The instant case presents no question of general importance which is not governed by the principles of cases decided by this Court. It is submitted that the decisions of the Commissioner of Internal Revenue and the Court of Claims upon petitioner's claim were correct.

The petition for writ of certiorari should be denied.

Respectfully submitted.

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SEPTEMBER, 1929.

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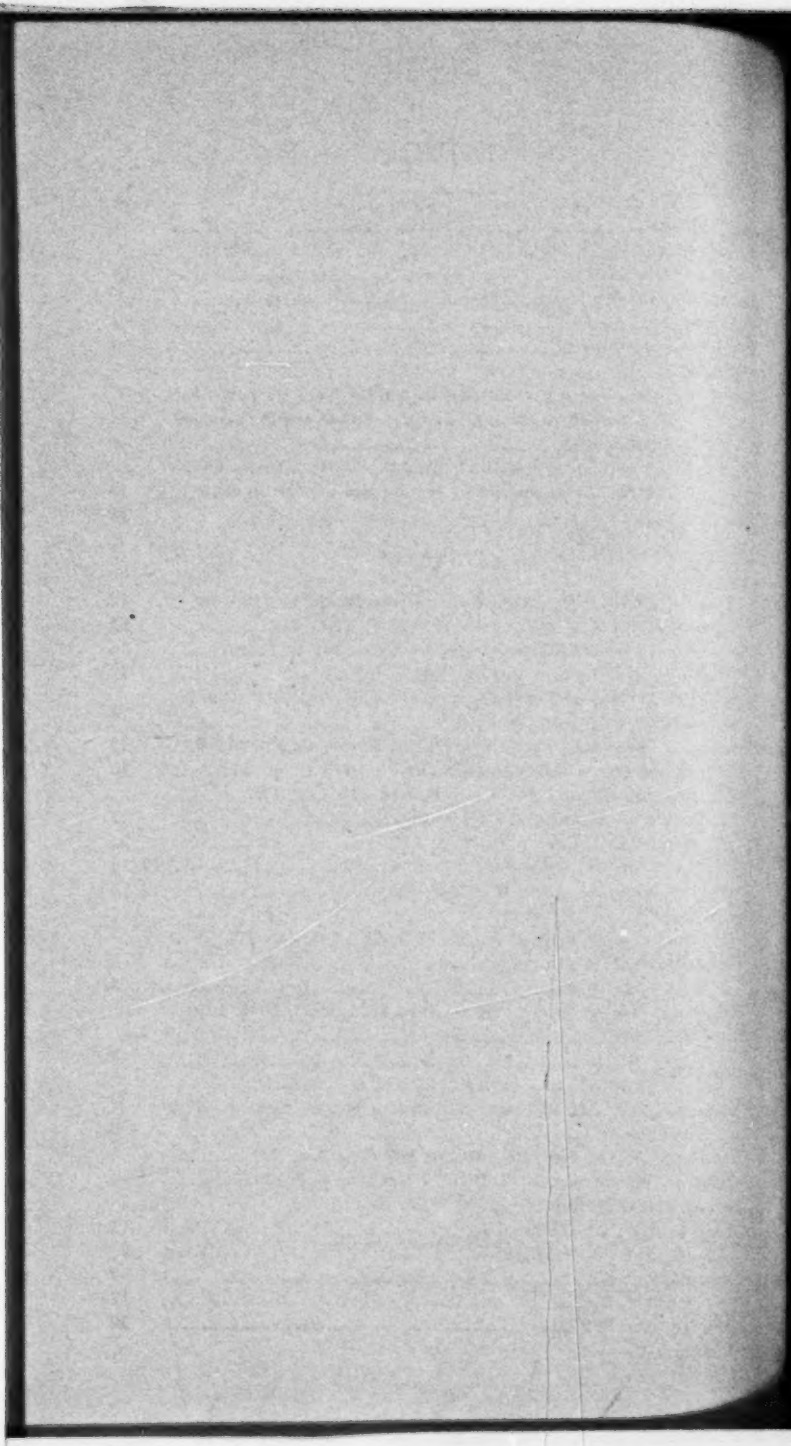

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OPINION BELOW

The opinion of the Court of Claims (R. 27–40) is reported in 67 C. Cls. 693.

JURISDICTION

The judgment of the Court of Claims was entered May 13, 1929. (R. 40.) Petition for writ of certiorari was filed August 9, 1929 (R. 41), and certiorari was granted October 21, 1929 (R. 43). The jurisdiction of this Court rests on Section 3 (b) of the Act of February 13, 1925.

QUESTION PRESENTED

Where a domestic corporation in 1916, 1917, and 1918 kept its accounts and made its tax returns on

the accrual basis, but had a London office which kept an expense account on the cash basis, was the Commissioner of Internal Revenue justified in refusing to allow the corporation to deduct from its taxes for 1918 the amount of British taxes which were paid in 1918 but accrued before 1918?

STATUTES INVOLVED

The Revenue Act of 1916, c. 463, 39 Stat. 756, 767, 769–771, provides as follows:

> SEC. 12. (a) In the case of a corporation, joint-stock company or association, or insurance company, organized in the United States, such net income shall be ascertained by deducting from the gross amount of its income received within the year from all sources—
>
> * * * * *
>
> Fourth. Taxes paid within the year imposed by the authority of the United States, or its Territories, or possessions, or any foreign country, or under the authority of any State, county, school district, or municipality, or other taxing subdivision of any State, not including those assessed against local benefits.
>
> * * * * *
>
> SEC. 13. (a) The tax shall be computed upon the net income, as thus ascertained * * *;
>
> * * * * *
>
> (d) A corporation, joint-stock company or association, or insurance company, keeping

accounts upon any basis other than that of actual receipts and disbursements, unless such other basis does not clearly reflect its income, may, subject to regulations made by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, make its return upon the basis upon which its accounts are kept, in which case the tax shall be computed upon its income as so returned;

* * * * *

The Revenue Act of 1918, c. 18, 40 Stat. 1057, 1059, 1064, 1080, provides as follows:

SEC. 238. (a) That in the case of a domestic corporation the total taxes imposed for the taxable year by this title and by Title III shall be credited with the amount of any income, war-profits and excess-profits taxes paid during the taxable year to any foreign country, upon income derived from sources therein, or to any possession of the United States.

* * * * *

SEC. 200. That when used in this title—

* * * * *

The term "paid," for the purposes of the deductions and credits under this title, means "paid or accrued" or "paid or incurred," and the terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under section 212.

SEC. 212. (b) The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made upon such basis and in such manner as in the opinion of the Commissioner does clearly reflect the income. * * *

STATEMENT

Petitioner sued in the Court of Claims to recover a part of the taxes for 1918 collected from it which it contends was deductible on account of British taxes paid during 1918.

In 1918 it paid the British Government the sum of $4,488.72, representing income taxes for the fiscal year beginning April 6, 1917, and ending April 5, 1918. These taxes were measured by income received from sources within Great Britain in the years 1914, 1915, and 1916, and were based on tax returns made prior to 1918.[1] In 1918 peti-

[1] This tax for the fiscal year ending April 5, 1918, has no relation to the profits actually earned in that year but is based upon "statutory income," the amount of the average profits of the three preceding years, 1914, 1915 and 1916. See Income Tax Act of June 22, 1842 (5 & 6 Vict., c. 35), Schedule (D); Finance Act of August 2, 1917 (7 & 8 Geo. 5, c. 31), Part II.

tioner also paid the British Government the sum of $44,126.40 (afterwards reduced by refund to $31,588.87) representing excess profits duty for the accounting period ended December 31, 1916, on income received from sources within Great Britain prior to that date.[2]

Various items and matters which are not involved in the question before this Court were before the Court of Claims. Of the findings of that court, the following have a bearing upon the question involved here (R. 27–30):

I

The plaintiff, Niles Bement Pond Company, is and at all times since 1900 has been, a New Jersey corporation, with its principal place of business at New York City, and was throughout said period engaged in the business of manufacturing machine tools and selling such products in the various States of the United States, and in Great Britain and other parts of the world.

II

Plaintiff seasonably filed in proper form Federal tax returns for the calendar years 1917, 1918, and 1919. Subsequent to the filing of the respective returns, the income and profits tax liability of plaintiff was determined and assessed for the year 1917 at

[2] See Finance Act of July 19, 1916 (6 & 7 Geo. 5, c. 24), Part III.

$271,505.16; for the year 1918 at $1,719,-644.93 and for the year 1919 at $323,177.92.

* * * * *

V

Plaintiff during the year 1918 paid to the Government of Great Britain the sum of $4,488.72 representing income taxes for the year beginning April 6, 1917, and ending April 5, 1918, paid on income derived from sources within Great Britain, and no part of said amount was ever refunded to plaintiff. During the year 1918 plaintiff also paid to the Government of Great Britain the sum of $44,126.40 representing excess-profits duty for the accounting period ended December 31, 1916, paid on income derived from sources within Great Britain.

VI

Said amounts of $44,126.40 and $4,488.72, totaling $48,615.12 were claimed as a credit on the plaintiff's income and profits tax return for the calendar year 1918, said credit being claimed under section 238 of the revenue act of 1918. The tax paid by plaintiff for the year 1918 was computed and determined without the allowance of said amount, or any part thereof as a credit.

VII

Subsequent to the filing of the return for 1918, plaintiff received from the Government of Great Britain a net refund of $12,537.53, reducing the payment of British excess-profits tax to a net amount of $31,588.87.

VIII

The British income tax aforesaid was paid to the British Government pursuant to a notice dated January 24, 1918. The British excess-profits duty aforesaid was paid pursuant to a "Notice of assessment and notice to pay duty," dated January 19, 1918. Said notices were the first notice, assessment, demand, or information received by plaintiff as to the amount of the income tax and excess-profits duty, respectively, so payable. The returns annually made by plaintiff to the British Government relating to income taxes and excess-profits duty contained no computation of the taxes; they contained only a report of income. Plaintiff in making its return of income did not attach any statement showing computation of the amount of the excess-profits duty payable by it for the accounting period ended December 31, 1916, or of the income tax for the year ending April 5, 1918.

IX

Under the method of accounting regularly employed by plaintiff in keeping its books throughout the year 1918, the accounting for expenses of the London office was on a cash disbursements basis and no accruals were made for any such expenses in advance of their payment.

X

The British taxes paid in 1918 were expenses of plaintiff's London office and were

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entered on the plaintiff's books of account at the time of payment in 1918 in accordance with the method of accounting regularly employed in keeping plaintiff's books.

XI

British income tax in the amount of $10,321.92 for the year beginning April 6, 1918, and ending April 5, 1919, paid by plaintiff in 1919 was claimed as a credit on plaintiff's 1919 return and was allowed as such credit under section 238 (a) of the revenue act of 1918. British income tax in the amount of $1,696.20 for the year beginning April 6, 1919, and ending April 5, 1920, was paid by plaintiff in 1924. No claim for credit was filed by plaintiff for 1920, nor was any such credit allowed; and no claim for credit was made in 1924, the plaintiff's return for that year showing a net loss and no tax due.

During the years 1916, 1917, 1918, and 1919, the books of the plaintiff were kept on the accrual basis. There were some exceptions in small items of deferred charges and credits in the plaintiff's accounts where the cash basis was reflected, but notwithstanding this the principal and dominant purpose and plan of its accounts were to show income upon an accrual basis as the general and controlling character of the accounts.

Plaintiff's corporation income-tax return for the year 1916, its corporation income-tax return and its excess profits tax return for the year 1917, and its corporation income

and profits tax returns for the years 1918 and 1919 were filed on the accrual basis.

The British income taxes paid by plaintiff in the year 1918 were assessed on account of income received in the years 1914, 1915, and 1916. The Commissioner of Internal Revenue allowed plaintiff deductions prior to 1918 for all of the British taxes in dispute. These taxes were based upon tax returns made by plaintiff prior to 1918.

The Court of Claims rendered judgment for the defendant. (R. 40.)

SUMMARY OF ARGUMENT

I. Section 238 (a) of the Revenue Act of 1918 provides that, in the case of a domestic corporation, the total taxes imposed for the taxable year shall be credited with the amount of certain foreign taxes. By virtue of the provisions of Section 200, the foreign taxes deductible are those which are paid or accrued during the taxable year "according to the method of accounting upon the basis of which the net income is computed under Section 212." The only applicable finding of the Court of Claims is that petitioner's return for the year 1918 was "filed on the accrual basis." This, with the other findings, shows that the method of accounting upon the basis of which the net income was computed under Section 212 was the accrual basis. Consequently, the petitioner was not entitled to the deduction of any foreign taxes except those which accrued in 1918.

II. The findings do not show that the British taxes which the petitioner sought to deduct did accrue in 1918, and the petitioner does not contend that any of them accrued in 1918. The $31,588.87 paid in 1918 on account of excess profits duty clearly accrued prior to 1918, and the remaining $4,488.72 paid in 1918 represented income taxes based upon tax returns made by petitioner prior to 1918.

ARGUMENT

I

PETITIONER WAS NOT ENTITLED TO DEDUCT FROM ITS TAXES FOR 1918 ANY FOREIGN TAXES EXCEPT THOSE WHICH ACCRUED DURING 1918

Petitioner's right to deduction is governed by Section 238 (a) of the Revenue Act of 1918 (p. 3, *supra*). Although this section provides that a domestic corporation shall be credited with the amount of certain taxes *paid* during the taxable year to any foreign country upon income derived from sources therein, Section 200 of the same Act (p. 3, *supra*) provides that the term "paid" as used therein—

> means "paid or accrued" or "paid or incurred," and the terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under Section 212.

The only finding applicable to the method of accounting upon the basis of which petitioner's net income was computed is that in paragraph XI, that its return for the year 1918 was "filed on the

accrual basis." (R. 30, p. 9, *supra*.) But it is true that the record does state (Finding IX, R. 29) that plaintiff's books "accounting for expenses" of its London office were kept on a cash disbursement basis and that no accruals were made thereon for any expenses in advance of their payment. It nowhere appears that, as regards income (i. e., receipts), the petitioner's books or its tax return for 1918 did not consistently use the accrual basis. Even if, in the absence of any clearer indication than appears in the findings, it can be assumed that the petitioner's return reported as expenses certain items appearing on the books of the London branch which accrued in some year other than 1918, that fact is not important.

Treasury Regulations 45 (1920 Ed.) promulgated under the Revenue Act of 1918 contained the following:

> ART. 23. *Bases of computation.*—(1) Approved standard methods of accounting will ordinarily be regarded as clearly reflecting income. A method of accounting will not, however, be regarded as clearly reflecting income unless all items of gross income and all deductions are treated with reasonable consistency. See section 200 of the statute for definitions of "paid," "paid or accrued," and "paid or incurred." * * * in any case in which it is necessary to use an inventory, no accounting in regard to purchases and sales will correctly reflect income except an accrual method. See section 213 (a) of the statute.

This provision has remained substantially unchanged in all later regulations issued by the Treasury Department. See Article 23 of Regulations 62, 65, 69, and Article 322 of Regulations 74.

As this Court said of the 1918 Revenue Act in *United States* v. *Mitchell*, 271 U. S. 9, 12–13:

> Notwithstanding the option given taxpayers, it is the purpose of the Act to require returns that clearly reflect taxable income. That purpose will not be accomplished unless income received and deductible disbursements made are treated consistently. It was not the purpose of the Act to permit gross income actually received to be diminished by taxes or other deductible items disbursed in a later year, even if accrued in the taxable year. *It is a reasonable construction of the law that the same method be applied to both sides of the account.* (Italics ours.)

See also *United States* v. *Anderson*, 269 U. S. 422; *Fourth & Central Trust Co.* v. *United States*, 65 C. Cls. 96, certiorari denied, 278 U. S. 604; *Mutual Benefit Life Ins. Co.* v. *Herold*, 198 Fed. 199, 215; *W. S. Barstow & Co.* v. *Bowers*, 15 F. (2d) 75; *Edward R. Bacon Grain Co.* v. *Reinecke*, 26 F. (2d) 705; *Robert P. Hyams Coal Co.* v. *United States*, 26 F. (2d) 805; *Henry Reubel, Exr.*, 1 B. T. A. 676.

We are aware of no case which had held that a taxpayer can apply different methods of accounting to different sides of his account in making returns of income.

The petitioner argues that his books were kept on a mixed basis and that he should have been allowed to make his returns on a mixed basis. In view of the fact that the findings show that the return as filed by the petitioner was upon the accrual basis, petitioner's contention that it was permissible for him to file a return upon a mixed basis would seem to be immaterial. But we submit that the statute does not permit the filing of a return upon which all receipts and most expenses are reported on an accrual basis, and a comparatively small part of the expenses are reported on the basis of actual disbursement. Such a return, even if it could be said to follow "the method of accounting regularly employed in keeping the books of such taxpayer" would be objectionable under the provisions of Section 212(b) because it "does not clearly reflect the income." Petitioner objects to the consideration of this matter on the ground that it does not appear that the Commissioner on that ground refused to allow the deduction, but we submit that this is immaterial. Moreover, the record does not disclose the exact form of return and does not disclose whether the Commissioner corrected the return or not. The burden is on the petitioner to prove all matters upon which it relies, and it can not predicate any argument upon anything which does not appear in the record. Cf. *United States* v. *Anderson,* 269 U. S. 422, 443; *United States* v. *Mitchell,* 271 U. S. 9, 12; *Reinecke* v. *Gardner,* 277 U. S. 239, 245.

Petitioner's contention that the Commissioner has been inconsistent in the matter of allowing deductions for its British taxes is equally futile. Finding XI (R. 29, p. 8, *supra*) does indicate that in 1919 a deduction was allowed on account of a British tax paid in that year. But the finding does not show enough facts in regard to that tax to indicate whether the Commissioner's action was correct or not. Moreover, even if it was incorrect, that would be immaterial. Petitioner has nowhere contended that the British tax paid in 1919 should have been allowed as a deduction for his taxes due the United States for 1918. It may well be that, through oversight or lack of information, the Commissioner erred in allowing the deduction of that tax in one year instead of in the other, but this is unimportant in view of the petitioner's failure to present a proper claim in regard to the matter. The record does show that the Commissioner allowed all British taxes which were paid in 1918 as deductions in computing the income returned in the years prior to 1918. This was the correct treatment of these items, and they are the only items which are before the Court.

II

THE FINDINGS DO NOT SHOW THAT THE BRITISH TAXES WHICH THE PETITIONER SOUGHT TO DEDUCT DID ACCRUE IN 1918

Petitioner seems nowhere to contend that any of the British taxes which were paid in 1918 accrued in that year. Certainly, the findings do not estab-

lish the fact that any of them did accrue in 1918, and the burden was upon the petitioner to prove this fact.

The findings show clearly that the $31,588.87 paid in 1918 on account of the excess profits duty accrued prior to 1918, as it is stated in Finding V (R. 28, p. 6, *supra*) that the excess profits duties paid were for the accounting period ended December 31, 1916. (See also Finding VII, R. 28, p. 6, *supra*.) The findings also show that this tax was based upon returns made by the petitioner prior to 1918. (Finding XI, R. 30, p. 9, *supra*.) The fact that the tax was not payable until 1918 did not prevent it from accruing prior to that time. *United States* v. *Anderson*, 269 U. S. 422, *supra*.

The situation is not quite so clear in regard to the balance of the amount sought to be deducted, $4,488.72. Finding V (R. 28, p. 6, *supra*) states that this amount represented "income taxes for the year beginning April 6, 1917, and ending April 5, 1918," but Finding XI (R. 30, p. 9, *supra*) states this was "assessed on account of income received in the years 1914, 1915, and 1916." It appears that the notice of the assessment of this was dated January 24, 1918 (Finding VIII, R. 28, p. 7, *supra*), and that it was based upon a tax return made by the petitioner prior to 1918 (Finding XI, R. 30, p. 9, *supra*).

The Government does not wish to be understood as asserting that this tax of $4,488.72 did accrue

prior to 1918. Whether it did or not depends upon questions of English law upon which we express no opinion. It seems sufficient for purposes of the present case that the findings do not state facts sufficient to show that the tax accrued in 1918. See *Cuba Railroad Co.* v. *Crosby*, 222 U. S. 473; *Coghlan* v. *South Carolina Railroad Co.*, 142 U. S. 101, 114; *Liverpool Steam Co.* v. *Phenix Insurance Co.*, 129 U. S. 397, 445.

CONCLUSION

It is respectfully submitted that the decision of the court below is correct and that its judgment should be affirmed.

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